

PRACTICE ADVISORY¹

December 8, 2009

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**Immigration Court Jurisdiction to Conduct Bond Hearings
Regardless Whether DHS Transfers Respondent
After the Hearing Request is Filed**

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**Model Brief, Sample Applications for Requesting a Bond Redetermination
Hearing and Sample Letters to DHS**

The National Immigration Project is aware that, in many parts of the country, the Department of Homeland Security (DHS) routinely transfers detainees after they have filed their request for a bond redetermination hearing. As a result, immigration judges in the location where the request was filed have refused to conduct the bond hearing, claiming a lack of jurisdiction over the bond proceeding. We have drafted the following sample documents that representatives or detainees who have such cases may find helpful for establishing that a detainee's transfer subsequent to the filing of his or her request for a bond redetermination hearing does not eliminate an immigration judge's jurisdiction to hold the hearing.

The model brief addresses the regulation at 8 C.F.R. § 1003.19(c), on which DHS and immigration judges may rely to argue that only one immigration court – the court having jurisdiction over the person's physical location – can conduct a bond hearing. This regulation provides for the filing of an application for a bond hearing in one of three places, in the designated order: (1) the court where the respondent is detained, if detained; (2) the court having administrative control of the case; and (3) the Office of the Chief Immigration Judge.

Contrary to popular misconception, conducting a bond proceeding in the place of original detention, even after a person is transferred, actually is consistent with 8 C.F.R. § 1003.19(c). As set forth in the model brief, the regulation was enacted to shorten the waiting period for a bond hearing and to more evenly distribute these hearings among immigration judges. Accordingly, immigration judges and DHS should not delay bond proceedings by forcing the person to re-file for a bond hearing before another immigration court. The model brief also discusses why traditional venue consideration support conducting the bond hearing in the court where the original request for a bond hearing was filed.

The model brief can be filed concurrently with a bond hearing request letter to immigration court or after a hearing has been set. We

¹ Written by Trina Realmuto.

have drafted sample letters to immigration court requesting bond hearings for use in the following circumstances, where the: (a) Notice to Appear (NTA) has been issued and filed; (b) NTA has been issued but has not been filed; and (c) NTA has not been issued. We also suggest concurrently filing Form G-28 with DHS to alert them to the imminent scheduling of the detainee's hearing. A sample letter to DHS is provided.

Where DHS has not issued an NTA, we suggest writing DHS to demand compliance with 8 C.F.R. § 287.3(d) (requiring custody determinations and NTA issuance within 48 hours of arrest). A sample demand letter to DHS also is provided.

The National Immigration Project is interested in hearing how the immigration courts and DHS react to the arguments set forth in the model brief. We have responses to some potential objections to the argument. Please email us at trina@nationalimmigrationproject.org to share your experience or discuss rebuttal arguments.

**[SAMPLE LETTER REQUESTING BOND HEARING –
NOTICE TO APPEAR NOT ISSUED]**

[ATTORNEY LETTERHEAD]

[Name]

Management Officer
Office of the Immigration Judge
Executive Office for Immigration Review

[Address]

RE: [Detainee's Name]
[A Number]

REQUEST FOR BOND REDETERMINATION HEARING

Dear _____:

Pursuant to 8 C.F.R. § 1003.14(a), we request review by an Immigration Judge of the custody and bond determination made by the Department of Homeland Security (DHS) with regard to the above named individual.

The regulation clearly provides that, after an initial custody determination by DHS, the respondent may request amelioration of the conditions under which he or she may be released. The Immigration Judge has the authority to detain the person in custody or order release and determine the amount of bond, if any, under which the person may be released. 8 C.F.R. §§ 1236.1(d), 1003.19.

Under 8 C.F.R. § 1003.19(c), applications for the exercise of the authority to review bond determinations are to be made first, if the person is detained, to the Immigration Court having jurisdiction over the place of detention.

In this case, Mr./Mrs./Ms. _____ is being detained by the _____ District Office, and is currently housed in _____. DHS has determined that Mr./Mrs./Ms. _____ is to be held [**select one:** in custody without bond – in lieu of \$_____ bond], and Mr./Mrs./Ms. _____ requests that an Immigration Judge redetermine this [**select one:** decision – bond amount].

Under 8 C.F.R. § 1003.14(a), “no charging document is required to be filed with the Immigration Court to commence bond proceedings pursuant to §§ 1003.19, 1236.1(d) and 1240.2(b) of this chapter.” Thus, it is not necessary that a Notice to Appear (which is by definition a charging document under 8 C.F.R. § 1003.13) be filed with the Immigration Court for an Immigration Judge to have jurisdiction over the custody determination. The regulation is clearly designed to protect non-citizens from ongoing detention without having charges filed against them.

[If applicable] Mr./Mrs./Ms. _____ has been held in DHS custody without charge since _____. Pursuant to 8 C.F.R. § 287.3(d), when DHS arrests a non-citizen without a warrant, it has 48 hours to make a custody determination and to determine whether to issue an NTA, absent extraordinary circumstances. More than 48 hours have elapsed since DHS arrested Mr./Mrs./Ms. _____ and took him/her into custody. DHS has not issued an NTA. Thus, Mr./Mrs./Ms. _____ has been detained without charges having been brought, let alone filed, for _____. This Court must exercise jurisdiction despite the lack of an NTA to avoid compounding DHS' violations of Mr./Mrs./Ms. _____'s well-established statutory, regulatory and constitutional rights to be free from detention without charge.

[If client threatened with transfer to another jurisdiction:] DHS has indicated that they are planning to transfer Mr./Mrs./Ms. _____ to _____ **[if known]** on ____ **[if known]**, despite the fact that s/he and his/her whole family live in _____. This transfer could take a considerable amount of time, and could be avoided if Mr./Mrs./Ms. _____'s **[select one: custody status -- bond decision]** is redetermined by an Immigration Judge before Mr./Mrs./Ms _____ is transferred.

[If concurrently filing model brief:] Moreover, as explained in the accompanying brief, this Court retains jurisdiction to review Mr./Mrs./Ms. _____'s **[select one: custody status -- bond decision]** even if DHS physically moves Respondent outside this Court's assigned geographical area.

Thus, we request that a bond redetermination hearing be calendared immediately so an Immigration Judge can review the determination by DHS that Mr./Mrs./Ms. _____ is to be held **[select one: without bond – in lieu of a very high bond]**.

Thank you for your prompt attention to this matter.

Sincerely,

[Attorney's Name]

cc: Assistant District Counsel, DHS (**city, state**).

Attachment: Form E-28 (Notice of Appearance of Attorney or Representative Before the Immigration Court)

**[SAMPLE LETTER A BOND HEARING –
NOTICE TO APPEAR ISSUED AND FILED]**

[ATTORNEY LETTERHEAD]

[Name]

Management Officer
Office of the Immigration Judge
Executive Office for Immigration Review

[Address]

RE: [Detainee's Name]
[A Number]

REQUEST FOR BOND REDETERMINATION HEARING

Dear _____:

Pursuant to 8 C.F.R. § 1003.14(a), we request review by an Immigration Judge of the custody and bond determination made by the Department of Homeland Security (DHS) with regard to the above named individual.

The regulation clearly provides that, after an initial custody determination by DHS, the respondent may request amelioration of the conditions under which he or she may be released. The Immigration Judge has the authority to detain the person in custody or order release and determine the amount of bond, if any, under which the person may be released. 8 C.F.R. §§ 1236.1(d), 1003.19.

Under 8 C.F.R. § 1003.19(c), applications for the exercise of the authority to review bond determinations are to be made first, if the person is detained, to the Immigration Court having jurisdiction over the place of detention.

In this case, Mr./Mrs./Ms. _____ is being detained by the _____ District Office, and is currently housed in _____. Mr./Mrs./Ms. _____ has been held in DHS custody since _____. ICE issued a Notice to Appear on _____ and it was filed with this Court on _____. ICE has determined that Mr./Mrs./Ms. _____ is to be held [**select one:** in custody without bond being set – in lieu of \$____ bond], and Mr./Mrs./Ms. _____ requests that an Immigration Judge redetermine this [**select one:** decision – bond amount].

[If client threatened with transfer to another jurisdiction:] DHS has indicated that they are planning to transfer Mr./Mrs./Ms. _____ to _____ [**if known**] on _____, despite the fact that s/he and his/her whole family live in _____. This transfer could take a considerable amount of time, and could be avoided if Mr./Mrs./Ms. _____'s

custody status/bond decision is redetermined by an Immigration Judge in _____ before Mr./Mrs./Ms. _____ is transferred.

[If concurrently filing model brief:] Moreover, as explained in the accompanying brief, this Court retains jurisdiction to review Mr./Mrs./Ms. _____'s **[select one: custody status -- bond decision]** even if DHS physically moves Respondent outside this Court's assigned geographical area.

Thus, we request that a bond redetermination hearing be calendared immediately so an Immigration Judge can review the determination by DHS that Mr./Mrs./Ms. _____ is to be held **[select one: without bond – in lieu of a very high bond]**.

Thank you for your prompt attention to this matter.

Sincerely,

[Attorney's Name]

cc: Assistant District Counsel, DHS (**city, state**).

Attachment: Form E-28 (Notice of Appearance of Attorney or Representative Before the Immigration Court)

**[SAMPLE LETTER REQUESTING A BOND HEARING –
NOTICE TO APPEAR ISSUED, BUT NOT FILED]**

[ATTORNEY LETTERHEAD]

[Name]

Management Officer
Office of the Immigration Judge
Executive Office for Immigration Review

[Address]

RE: [Detainee’s Name]
[A Number]

REQUEST FOR BOND REDETERMINATION HEARING

Dear _____:

Pursuant to 8 C.F.R. § 1003.14(a), we request review by an Immigration Judge of the custody and bond determination made by the Department of Homeland Security (DHS) with regard to the above named individual.

The regulation clearly provides that, after an initial custody determination by DHS, the respondent may request amelioration of the conditions under which he or she may be released. The Immigration Judge has the authority to detain the person in custody or order release and determine the amount of bond, if any, under which the person may be released. 8 C.F.R. §§ 1236.1(d), 1003.19.

Under 8 C.F.R. § 1003.19(c), applications for the exercise of the authority to review bond determinations are to be made first, if the person is detained, to the Immigration Court having jurisdiction over the place of detention.

In this case, Mr./Mrs./Ms. _____ is being detained by the _____ District Office, and is currently housed in _____. Mr./Mrs./Ms. _____ has been held in DHS custody since _____. ICE issued a Notice to Appear on _____, but it has not yet been filed with any court. ICE has determined that Mr./Mrs./Ms. _____ is to be held [**select one:** in custody without bond being set – in lieu of \$____ bond], and Mr./Mrs./Ms. _____ requests that an Immigration Judge redetermine this [**select one:** decision – bond amount].

Under 8 C.F.R. § 1003.14(a), “no charging document is required to be filed with the Immigration Court to commence bond proceedings pursuant to §§ 1003.19, 1236.1(d) and 1240.2(b) of this chapter.” Thus, it is not necessary that a Notice to Appear (which is by definition a charging document under 8 C.F.R. § 1003.13) be filed with the

Immigration Court for an Immigration Judge to have jurisdiction over the custody determination.

[If client threatened with transfer to another jurisdiction:] In addition, DHS has indicated that they are planning to transfer Mr./Mrs./Ms. _____ to _____ **[if known]** on _____, despite the fact that s/he and his/her whole family live in _____. This transfer could take a considerable amount of time, and could be avoided if Mr./Mrs./Ms. _____'s custody status/bond decision is redetermined by an Immigration Judge in _____ before Mr./Mrs./Ms. _____ is transferred.

[If concurrently filing model brief:] Moreover, as explained in the accompanying brief, this Court retains jurisdiction to review Mr./Mrs./Ms. _____'s **[select one: custody status -- bond decision]** even if DHS physically moves Respondent outside this Court's assigned geographical area.

Thus, we request that a bond redetermination hearing be calendared immediately so an Immigration Judge can review the determination by DHS that Mr./Mrs./Ms. _____ is to be held **[select one: without bond – in lieu of a very high bond]**.

Thank you for your prompt attention to this matter.

Sincerely,

[Attorney's Name]

cc: Assistant District Counsel, DHS (**city, state**)

Attachment: Form E-28 (Notice of Appearance of Attorney or Representative Before the Immigration Court)

**[LETTER TO DHS – NO NOTICE TO APPEAR ISSUED -
REQUEST FOR IMMEDIATE RELEASE OR NOTICE TO APPEAR]**

[ATTORNEY LETTERHEAD]

[Name]

_____, District Director
_____ District Office
US Immigration and Customs Enforcement
Department of Homeland Security
[Address]

RE: [Detainee's Name]
[A Number]

REQUEST FOR COMPLIANCE WITH 8 C.F.R. § 287.3(d)

Dear _____:

Pursuant to 8 C.F.R. § 287.3(d), your office is required to immediately release the above named individual or, alternatively, issue [him/her] a Notice to Appear (NTA). Under this regulation, when the Department of Homeland Security (DHS) arrests a non-citizen without a warrant, it has 48 hours to make a custody determination and to determine whether to issue an NTA, absent extraordinary circumstances.

Mr./Mrs./Ms. _____ was arrested on _____ and is being detained by the _____ District Office. He/She is currently housed in _____. In violation of the clear language of 8 C.F.R. § 287.3(d), more than 48 hours have elapsed since his/her arrest and detention without charge.

Although belated issuance of an NTA would not eliminate the violation of 8 C.F.R. § 287.3(d) that has occurred, it would stop the violation from continuing. Significantly, it also would stop the ongoing violation of Mr./Mrs./Ms. _____'s well-established statutory, regulatory and constitutional rights to be free from detention without charge.

Thank you for your prompt attention to this matter. We hope that your office will immediately comply with 8 C.F.R. § 287.3(d) so that we may avoid pursuing other avenues to seek redress of this violation.

Sincerely,

[Attorney's Name]

Attachment: Form G-28 (Notice of Appearance of Attorney or Representative)

**[LETTER TO DHS – NO NOTICE OF FILING FORM G-28
NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR
REPRESENTATIVE]**

[ATTORNEY LETTERHEAD]

[Name]

_____, District Director
_____ District Office
US Immigration and Customs Enforcement
Department of Homeland Security
[Address]

RE: [Detainee’s Name]
[A Number]

NOTICE OF FILING FORM G-28

Dear _____:

By this letter, please note the filing of the attached Notice of Entry of Appearance as Attorney or Representative (Form G-28) evidencing my [office’s] representation of Mr./Mrs./Ms. _____. Please also note that Mr./Mrs./Ms. _____ also has filed a request for a custody redetermination with the Immigration Court in _____. The request was filed [on _____ / today].

According to a Letter Report by the Office of Inspector General on November 10, 2009, officials of the Office of Immigration and Customs Enforcement (ICE) report that “inadvertent detainee transfers occur when the detainee’s legal counsel submits a request for a custody or bond hearing before submitting a Form G-28..., which announces the detainee’s legal representation.” See OIG “Immigration and Customs Enforcement Policies and Procedures Related to Detainee Transfers,” Report No. OIG-10-13 (Nov. 10, 2009) at p. 3. Thus, notice of my representation is filed to avoid such an inadvertent transfer of Mr./Mrs./Ms. _____ prior to [his / her] bond redetermination hearing.

We further note that ICE has the ability to cancel transfers of detainees with a scheduled hearing. *Id.* at p. 4. Thus, if Mr./Mrs./Ms. _____ is scheduled for transfer, we request that your office immediately cancel the transfer in light of [his / her] upcoming custody hearing.

Sincerely,

[Attorney’s Name]

[MODEL BRIEF IN SUPPORT OF REQUEST FOR BOND HEARING]

[ATTORNEY INFORMATION]

Attorney for Respondent

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

[CITY], [STATE]

In the Matter of:)	
)	
Xxxx YYYYYYYYYYYY,)	File Number: A#####
)	
Respondent,)	
)	Date of Hearing: _____
In Removal Proceedings.)	Time of Hearing: _____
)	Courtroom: Hon. _____
_____)	

RESPONDENT’S BRIEF IN SUPPORT OF REQUEST FOR BOND HEARING

I. INTRODUCTION

Pursuant to 8 C.F.R. § 1003.14(a), Respondent, XXXXX (hereinafter, “XXX”) has filed a request to immediately commence bond proceedings simultaneously with this brief. Respondent anticipates that DHS will try to move [him/her] either before this Court schedules a bond hearing or after the Court schedules a hearing but before the date of the hearing. Following such transfer, Respondent anticipates DHS will attempt to argue that this Court no longer has jurisdiction to conduct bond proceedings. As set forth below, this Court has jurisdiction to conduct bond proceedings regardless of whether DHS transfers Respondent.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

[**EITHER:** On or about _____, DHS took Respondent from [county jail, etc] in [city, state] into custody following issuance of a detainer.] **OR:** On or about _____, DHS arrested Respondent at [location] and took him into custody following issuance of a _____ *** .]

[**OR:** On or about _____, DHS took Respondent into custody following _____.]

[**If Notice to Appear has been issued:** On _____, DHS issued a Notice to Appear (NTA) charging Respondent as removable from to the United States pursuant to INA § _____ for _____.] *See Exhibit* __ [copy of NTA]. [**If NTA was filed with the immigration court:** The NTA was filed with this Court on _____.]

[**If NTA was not filed with the immigration court:** The NTA has not been filed with this Immigration Court; however, this does not impact this Court’s jurisdiction over this bond proceeding. *See* 8 C.F.R. § 1003.14(a) (“[N]o charging document is required to be filed with the Immigration Court to commence bond proceedings pursuant to §§ 1003.19, 1236.1(d) and 1240.2(b) of this chapter”).]

[**If Notice to Appear has not been issued:** In this case, as in all cases where the government has arrested a non-citizen without a warrant, the government is afforded 48 hours – absent extraordinary circumstances – to make a custody determination and decide whether to issue an NTA. 8 C.F.R. § 287.3(d). **If true:** More than 48 hours have

elapsed since DHS arrested Respondent and took him into custody. DHS has not issued an NTA.]

However, the lack of an NTA does not impact this Court's jurisdiction over this bond proceeding. The individual is entitled to immediately file a custody redetermination request and the immigration court has jurisdiction to conduct a bond hearing. 8 C.F.R. § 1003.14(a).²

[If true: In addition, Respondent has informed DHS that it must immediately release Respondent because it has violated 8 C.F.R. § 287.3(d) and Respondent's statutory rights under INA §§ 287 and 236 and his due process right to liberty by continuing to detain Respondent without charge. *See Exhibit ____ [attach copy of letter demanding release to DHS]*. To avoid further violations of Respondent's statutory, regulatory and constitutional rights, and in accordance with the purpose of 8 C.F.R. § 1003.14(a), this Court must conduct a bond hearing immediately.]

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² The regulation at 8 C.F.R. § 1003.14(a) provides that “no charging document is required to be filed with the Immigration Court to commence bond proceedings pursuant to §§ 1003.19, 1236.1(d) and 1240.2(b) of this chapter.” The regulation is designed to protect non-citizens from ongoing detention without having charges filed against them. The situation here is more compelling: a non-citizen is detained and no charges have been brought, let alone filed against him. If this Court fails to exercise jurisdiction, it will compound DHS' violation of Respondent's well-established statutory, regulatory and constitutional right to be free from detention without charge.

III. ARGUMENT

A. THIS COURT HAS JURISDICTION TO CONDUCT A BOND PROCEEDING.

Section 236 of the Immigration and Nationality Act (INA) authorizes the Attorney General to detain or release a noncitizen “pending a decision on whether the [person] is to be removed from the United States.” The regulation at 8 C.F.R. § 1003.19(a) further authorizes immigration judges to review DHS’ custody and bond determinations pursuant to 8 C.F.R. part 1236. Part 1236 of the regulations refers back to § 1003.19 as “govern[ing] availability to the respondent of recourse to other administrative authority for release from custody” and specifically provides that the only persons beyond an immigration judge’s bond jurisdiction are persons described in 8 C.F.R. § 1003.19(h). *See* 8 C.F.R. § 1236.1(c)(10), (11).

In turn, in 8 C.F.R. § 1003.19(h) precludes the immigration judge from reviewing DHS custody decisions with respect to the following classes of noncitizens: (a) persons in exclusion proceedings; (b) certain arriving aliens; (c) persons described in INA § 237(a)(4) (inadmissibility based on security and related grounds); (d) persons subject to mandatory detention; and (e) persons in deportation proceedings subject to former INA § 242(a)(2) as amended by § 440(c) of Pub. L. 104-132. Respondent does not fall within any of these classes. As such, he is entitled to “recourse...for release from custody” from this Court, pursuant to INA § 236 and the regulations at 8 C.F.R. §§ 1003.19 and 1236.1.

In sum, this Court has jurisdiction to conduct a bond hearing pursuant to INA § 236, 8 C.F.R §§ 1003.19(a) and 1236. [**If applicable:** As stated above, the lack of an NTA does not impact the Court’s ability to conduct a bond proceeding. 8 C.F.R. § 1003.14(a).]

B. NOTHING IN THE STATUTE OR THE REGULATIONS DIVESTS THIS COURT OF JURISDICTION OVER RESPONDENT’S BOND PROCEEDING IF DHS TRANSFERS RESPONDENT.

1. 8 C.F.R. § 1003.19(c) Does Not Divest This Court of Jurisdiction.

There is no basis for any DHS’ contention that Respondent’s transfer subsequent to filing the accompanying request for a bond hearing eliminates this Court’s jurisdiction to conduct a bond hearing. Specifically, any reliance on 8 C.F.R. § 1003.19(c) to support such a position would be erroneous.

The regulation reads:

(c) Applications for the exercise of authority to review bond determinations shall be made to one of the following offices, in the designated order:

- (1) If the respondent is detained, to the Immigration Court having jurisdiction over the place of detention;
- (2) To the Immigration Court having administrative control over the case;
or
- (3) To the Office of the Chief Immigration Judge for designation of an appropriate Immigration Court.

8 C.F.R. § 1003.19(c) (emphasis added).

The Executive Office for Immigration Review (EOIR) promulgated this regulation, along with various other “procedural changes,”³ “for the purpose of assisting in the expeditious, fair, and proper resolution of issues arising in [deportation, exclusion, bond, and rescission proceedings] by providing the parties involved with clear, useful, and readily accessible procedural guidelines.” 52 Fed. Reg. 2931, 2936 (Jan. 29, 1987). EOIR further stated in the preamble that the specific purpose of 8 C.F.R. § 1003.19(c)

³ See, e.g., 8 C.F.R. § 1003.19(b) (providing that applications for a bond redetermination hearing may be made orally, in writing, or by telephone at the judge’s discretion).

(then located at 8 C.F.R. § 3.18 (1987)) was “to maximize the prompt availability of Immigration Judges for respondents applying for custody/bond redeterminations while at the same time causing an equitable distribution of the caseload among Immigration Judges.” 52 Fed. Reg. 2931, 2936 (Jan. 29, 1987). This Court achieves both the objectives of a “prompt” hearing and a more “equitable distribution of the caseload among Immigration Judges” by conducting Respondent’s bond hearing, rather than delaying his hearing to await transfer and rescheduling by another immigration court. Avoiding the delay and duplication of judicial attention implicit in this [scheduling **or** rescheduling] of a bond hearing also serves the interests of judicial economy.

Indeed, the plain language of the regulation mandates reading it as a procedural rule, rather than jurisdictional bar. “In interpreting an administrative regulation, as in interpreting a statute, [the court] must begin by examining the language of the provision at issue.” *Resnik v. Swartz*, 303 F.3d 147, 151-52 (2d Cir. 2006) (citation omitted). Here, any argument that this regulation addresses jurisdiction would violate its plain language as the regulation only governs the location where noncitizens must file an “[a]pplications” to review a DHS custody determination.

The plain meaning of jurisdiction is, as it always has been, the “power of the court to decide a matter in controversy...”. Black’s Law Dictionary (6th ed. 1990). By contrast, the definition of “application” is the “act of making a request for something.” Black’s Law Dictionary (6th ed. 1990). Under its plain language, the regulation governs where to file a request for the immigration court to exercise of its power to decide whether a person should continue to be detained or released. The Court must follow the plain language of the regulation. *Matter of E-L-H-*, 23 I&N Dec. 814, 815 (BIA 2005)

(finding the plain language of the regulation to be controlling). *See also, INS v. Cardoza-Fonseca*, 480 U.S. 421, 430-32 (1987) (“This ordinary and obvious meaning of the phrase [well-founded fear] is not to be lightly discounted”).

In sum, 8 C.F.R. § 1003.19(c), on its face, says nothing about this Court’s jurisdiction to review a custody determination. Thus, any suggestion that it can be read to limit this Court’s jurisdiction violates the plain language of the regulations and frustrates the objectives it was promulgated to achieve.

2. This Court’s Jurisdiction to Conduct Bond Proceedings Is Not Restricted to Its Assigned Geographical Area.

The regulations at 8 C.F.R. § 1003.11 authorize the designation of certain immigration courts as “administrative control Immigration Courts.” The regulation defines such a court as one that “creates and maintains Records of Proceedings for Immigration Courts within an assigned geographical area.” Administrative control courts, unlike other immigration courts, receive documents and correspondence related to a Record of Proceeding. *Id.* A list of administrative control courts and courts within the assigned geographical area for each court is available at:

<http://www.justice.gov/eoir/vll/courts3.htm>.

Importantly, 8 C.F.R. § 1003.11 is a procedural regulation. It informs the public where to file documents related to a case before an immigration court. Indeed, the concept of administrative control historically has been connected to procedural matters. *See, e.g., Matter of G-Y-R*, 23 I&N Dec. 181, 191 (BIA 2001) (noting that address change information must be sent to court having administrative control over the Record of Proceeding); *Matter of Gawaran*, 20 I&N Dec. 938, 939 (BIA 1995) (reciting regulation providing that notice of appeal must be filed with immigration court having

administrative control over the Record of Proceeding); *Matter of Shih*, 20 I&N Dec. 697, 698 n.1 (BIA 1993) (same); *Matter of Torre*, 19 I&N Dec. 18, 19 (BIA 1984) (discussing administrative control over records of proceedings following separation of the immigration court from the former Immigration and Naturalization Service).

Like 8 C.F.R. § 1003.19(c), 8 C.F.R. § 1003.11 does not govern this Court's subject-matter jurisdiction. Whether a court has administrative control over a record of proceeding, and thus can accept the filing of documents, is not a limitation on another immigration court or administrative control court's authority to conduct a bond proceeding.

3. Case Law Supports Ongoing Jurisdiction After DHS Moves Respondent.

As set forth above, nothing in the Act or the regulations would divest this Court of that jurisdiction if DHS transfers Respondent after the filing of [his/her] application for a bond hearing with this Court. Indeed, analogous case law supports ongoing jurisdiction in this situation.

In *Ex Parte Endo*, 323 U.S. 283 (1944), the Supreme Court considered whether the Northern District of California retained jurisdiction over a habeas corpus petition after the War Relocation authority transferred the petitioner to the Central Utah Relocation Center in Topaz, Utah. The Court concluded that the Northern District of California retained jurisdiction because the petitioner remained in the custody of at least one respondent within the district who had legal authority to effectuate her release. 323 U.S. at 306-07.

In 2004, the Supreme Court affirmed its holding in *Endo*. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004). In *Padilla*, the Court stated that its decision in *Ex parte Endo*

“stands for the important but limited proposition that when the Government moves a habeas petitioner after she properly files a petition [...], the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner’s release.” 124 S. Ct. at 441.

These same principles inform the interpretation of the governing regulations and support the view that the immigration court should retain jurisdiction to review a properly filed custody redetermination request even if the noncitizen is subsequently transferred outside the court’s assigned geographic area.

C. TRADITIONAL VENUE CONSIDERATIONS WEIGH HEAVILY IN FAVOR OF CONDUCTING BOND PROCEEDING IN THIS COURT.

Assuming it could be argued that 8 C.F.R. § 1003.19(c) dictates the venue of bond proceedings, traditional venue considerations weigh heavily in favor of conducting bond proceedings in this Court.

The Supreme Court long has recognized that a person’s physical location should not categorically preclude him or her from bringing their action in the most convenient forum. *Braden v. 30th Judicial Cir. Ct. of Ky.*, 410 U.S. 484, 500 (1973). Rather, courts should apply traditional venue considerations to determine the most convenient forum for the action. *Braden*, 410 U.S. at 494, 500. Traditional venue considerations include: (1) where the material events occurred; (2) where records and witnesses pertinent to the claim are likely to be found; and (3) the convenience of the forum to the parties; and (4) the familiarity of the court with the applicable laws. *Braden v. 30th Judicial Cir. Ct. of Ky.*, 410 U.S. 484, 493-94 (1973).

Such considerations have been endorsed by the Board of Immigration Appeals and are routinely employed by immigration courts. In *Matter of Rahman*, 20 I&N Dec. 480, 483-85 (BIA 1992), the Board held that immigration judges, in evaluating requests to change the venue in removal proceedings, should weigh administrative convenience, expeditious treatment of the case, location of witnesses, cost of transporting witnesses or evidence to a new location, and factors commonly associated with the respondent's place of residence.

Here, application of traditional venue considerations evidence that venue is proper in this Court. First, the location of material events, including **[add if applicable:** respondent's alleged arrest and conviction[s], as well as all corresponding records and witnesses, are all within the [state / county] of _____. Second, this Court is clearly the most convenient forum for respondent, as respondent's counsel, with whom [he/she] has a pre-existing relationship, is physically located here as well. See Randy Hertz and James S. Liebman, *Federal Habeas Corpus Practice and Procedure*, Fifth Edition § 10.2 (Matthew Bender) (noting that *forum non conveniens* principles include the convenience of counsel). See also, Office of Inspector General Letter Report: "Immigration and Customs Enforcement Policies and Procedures Related to Detainee Transfers," Report No. OIG-10-13 (Nov. 10. 2009), at p .4 (noting that transfer can render continued attorney representation impractical due to distance, travel time, and cost and noting that arranging legal representation causes difficulties and delays to detainees who have been transferred).

Respondent's family, consisting of [his / her] _____, also is located here and would post any bond that this Court sets. Third, this Court is equally as

convenient for DHS as is any other forum because the government is, and will always be, represented by attorneys within DHS' Office of the Chief Counsel, which represents the agency in immigration courts throughout the United States.

Moreover, application of the additional factors relevant to removal proceedings also weigh heavily in favor of conducting bond proceedings in this Court. **[Insert/edit the rest of this paragraph as applicable]** Both administrative convenience and expeditious treatment are better served if bond proceedings take place here as this Court already has [received the NTA, possesses the Record of Proceedings, and has scheduled a hearing date within the next ___ days.] [In addition, undersigned counsel already has prepared for the bond hearing here and has arranged for witnesses and Respondent's family to attend the hearing].

Should this Court refuse to conduct Respondent's bond proceeding, the proceeding will be unduly delayed until they can be rescheduled at a new location. *See* Office of Inspector General Letter Report: "Immigration and Customs Enforcement Polices and Procedures Related to Detainee Transfers," (Nov. 10. 2009), at p .3-4 ("...re-filing bond or custody determinations creates unnecessary cost and additional time in detention"). Such delay would prejudice Respondent who is eligible for a custody redetermination and merits a favorable exercise of this Court's discretion. *Matter of Chirinos*, 16 I&N Dec. 276, 277 (BIA 1977) ("Our primary consideration in a bail determination is that the parties be able to place the facts *as promptly as possible* before an impartial arbiter") (emphasis in the original). Additionally, the cost of transporting witnesses could make their appearance prohibitively expensive.

Significantly, Respondent's absence should not weigh against conducting bond proceedings in this Court for several reasons. **[Insert/edit the rest of this paragraph as applicable]** This Court routinely conducts bond proceedings regardless of whether or not the respondent is present. The immigration court in _____, where Respondent is being transferred, routinely conducts bond proceedings regardless whether or not the respondent is present. **[If applicable:** As set forth in the accompanying declaration,] Respondent has waived his right to testify at the bond hearing. 8 C.F.R. §§ 1003.19(d) (respondent has a right to present evidence at bond hearing); 1003.25(a) (immigration judge may waive presence of respondent). Respondent is amenable to testifying telephonically or by video conference. 8 C.F.R. § 1003.25(c) (permitting telephonic or video hearings); *Matter of Chirinos*, 16 I&N Dec. 276, 277 (BIA 1977) (noting that to expedite bond hearings, "we even favor telephonic 'hearings' before the immigration judge with the consent of the parties, where feasible").

Finally, this Court is familiar with the applicable laws and the specific legal issues involved in bond proceedings. Thus, it is appropriate for this Court to assess Respondent's eligibility for release.

In sum, in the event this Court has venue concerns about conducting Respondent's bond hearings, it should balance the above-mentioned venue considerations, which weigh heavily in favor of conducting the hearing in this Court. Moreover, application of these venue considerations also minimizes DHS's ability to unilaterally determine the venue in which individuals may seek review of its custody decisions.

IV. CONCLUSION

There is no valid basis to preclude this Court from reviewing Respondent's custody status. Thus, the Court should schedule and conduct a bond hearing as soon as possible even if DHS transfers Respondent prior to conducting the hearing.

Respectfully submitted,

Dated: _____

Attorney for Respondent

[Attach a certificate of service]